

him from that discovery which he requires by his bill. But although the plea may advance some new matter, yet it may be, that it only denies some fact affirmed by the plaintiff, and which is so essential to his case, that without establishing its truth he cannot recover. *Drew v. Drew*, 2 Ves. & Bea. 159. If a plea be overruled generally, the defendant is ordered to answer; or it may be wholly overruled as a plea, leaving it to stand for an answer, with or without liberty to except; or it may be allowed to operate as a plea, for the purpose of protecting the defendant from some particular discovery, and to stand for an answer with liberty to except as to the rest. *Pusey v. Desbourrie*, 3 P. Will. 321; *Brereton v. Gamul*, 2 Atk. 240; *Child v. Gibson*, 2 Atk. 603; *King v. Holcombe*, 4 Bro. C. C. 439; *Spurrier v. Fitzgerald*, 6 Ves. 548.

But a plea admits the truth of the facts set forth in the bill, that are not particularly covered and denied by it; and therefore, if the defendant fails to establish the truth of his plea, on issue joined thereon, as to all the discovery sought by the bill, and which the defendant protected himself from making by his plea, the plaintiff is left precisely in the situation of having had his bill taken *pro confesso*. But that may be; and, in many cases, is far from answering his purpose. The disclosure of facts which the defendant alone is capable of making, and of which the plaintiff is unable to adduce any proof, may be essentially or indispensably necessary to enable him to obtain the relief he is in quest of. Consequently, where a discovery is needful to the plaintiff he shall not, under such circumstances, lose the benefit of it; as the Court will order the defendant to be examined on interrogatories to supply the defect. *Brownsword v. Edwards*, 2 Ves. 246; *Hawdry v. Trollop*, *Nelson*, 119; *Mitf. Plea*. 240; *Brown v. Wilson*, 4 Hen. & Mun. 481.

**148** For the same purpose of supplying the defect in \*cases where the Act of Assembly allows the plaintiff to proceed on the default of the defendant, it is provided, that whenever the bill shall charge any matter as being within the private knowledge of the defendant, the plaintiff may, on making affidavit, in open Court, that such matter does rest in the private knowledge of the defendant, have the bill, as to such matter, the same being sufficiently alleged, taken *pro confesso*, and have a final decree accordingly. 1820, ch. 161, s. 2. But where the relief sought can be obtained without the discovery of any fact by the defendant, the plaintiff may, at once, have a decree, without either interrogating the defendant, or making any affidavit of the truth of the facts alleged in the bill as to which the defendant ought to have answered.

The meaning of a demurrer, or a plea, is to intercept, in an early stage, a cause which must ultimately end in nothing, *Freeland v. Johnson*, 2 Anstr. 407; or to prevent a discovery that may be prejudicial to the defendant. It is, therefore, important, in most cases,